



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 30390318

Date: MAR. 28, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a video editor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner satisfied three of the initial evidentiary criteria, he did not show his sustained national or international acclaim and demonstrate he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined the Petitioner fulfilled the following three claimed categories: judging at 8 C.F.R. § 204.5(h)(3)(iv), display at 8 C.F.R. § 204.5(h)(3)(vii), and high salary at 8 C.F.R. § 204.5(h)(3)(ix). In addition, the Director found the Petitioner did not meet the following two claimed criteria: leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and commercial successes at 8 C.F.R. § 204.5(h)(3)(x) through the submission of comparable evidence under 8 C.F.R. § 204.5(h)(4).

On appeal, the Petitioner states that “this appeal contests only the Service’s final merits determination.” Because the Petitioner does not contest or rebut the Director’s findings for the leading or critical role and commercial successes criteria, we determine them to be waived. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

In addition, although the Director found the Petitioner met the judging and high salary criteria, the record does not support this determination. Accordingly, we withdraw the Director’s favorable conclusions for these two criteria, discussed below.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. 204.5(h)(3)(iv).

USCIS determines whether the person has acted as the judge of the work of others in the same or an allied field of specification.<sup>1</sup> The petitioner must show that the person has not only been invited to judge the work of others, but also that the person actually participated in the judging of the work of

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<sup>1</sup> *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

others in the same or allied field of specialization.<sup>2</sup> For example, a petitioner might document the person's peer review work by submitting a copy of a request from a journal to the person to do the review, accompanied by evidence confirming that the person actually completed the review.<sup>3</sup>

The Petitioner did not initially claim eligibility for this criterion. In response to the Director's request for evidence (RFE), the cover letter indicated that the Petitioner "has participated as a judge for the work of others for the Television's Academy's Emmy Awards under the peer group of [REDACTED] [REDACTED] for artistic and technical merit for the national and international television industry." In support of this claim, the Petitioner provided a "Voting" screenshot from the Television Academy's website reflecting "Congratulations you've finished voting in all eligible categories" and listed eight categories. However, the screenshot does not identify the Petitioner as the judge who participated in the voting. In fact, the screenshot does not recognize any individual who conducted the judging.

Moreover, while the Petitioner offered a "Personal Information" screenshot indicating the Petitioner's membership status, the document does not show any voting history or substantiate the Petitioner's participation as a judge in the prior "Voting" screenshot. Even if the Petitioner judged this event, the Petitioner did not demonstrate he conducted this voting prior to the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Again, the Petitioner did not initially claim eligibility for this criterion and provided evidence in response to the Director's RFE. However, the evidence does not contain any dates for the voting, and the Petitioner did not establish when his purported judging occurred.

In addition, the Petitioner claimed that he "has participated as a judge in the [REDACTED] Emmy Awards where television programs like news, programming, and sports within the [REDACTED] market are awarded." The Petitioner submitted a document without any identifying characteristics reflecting: "Thank You! Your submission has been received. Thank you for your RSVP to judge for the [REDACTED] [REDACTED] Emmy Awards." Similar to the discussion above, the document does not identify the Petitioner, or anybody else, as a judging participant. Furthermore, the document does not show actual judging but acknowledgment of an interest to judge at the [REDACTED] Emmy Awards.<sup>4</sup>

Further, the Petitioner submitted another unidentified document reflecting a "Call for Judges – Spanish" with the Petitioner's name, personal information, and employment questions. However, the document does not show the Petitioner actually participated as a judge at the event rather than an application to judge. Although the Petitioner presented additional documentation regarding background information about the [REDACTED] Emmy Awards and membership requirements for the [REDACTED] the evidence does not show the Petitioner's actual involvement in the judging process.

Because the Petitioner did not establish his actual participation as a judge of the work of others, we withdraw the Director's favorable finding for this criterion. Accordingly, the Petitioner did not demonstrate he satisfies this criterion.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> The [REDACTED] Emmy Awards were held on [REDACTED] 2002 at the Television Academy's campus in [REDACTED] California. See [www.emmys.com](http://www.emmys.com).

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

USCIS determines whether the person's salary or remuneration is high relative to the compensation paid to others working the field.<sup>5</sup> The Petitioner did not initially claim eligibility for this criterion. In response to the Director's RFE, the Petitioner submitted a copy of his 2022 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return and comparable editor salaries. The Petitioner, however, did not provide any substantiating documentation of his income that he reported on his tax return. For example, the Petitioner did not offer any accompanying IRS Form W-2, Wage and Tax Statement. The Petitioner also did not submit any other supporting evidence, such as paystubs, contracts, employer letters, or other documentation confirming his salary, employer, and occupation.

Without corroborating evidence, the Petitioner's self-prepared and unsigned IRS Form 1040 is not sufficient to establish his salary as a video editor. Moreover, the Petitioner's evidence does not identify his employer or employers, how much he earned from each employer or employers, and whether his compensation was in an editor occupation or that he received income from other employment occupations.

Furthermore, the Petitioner's 2022 IRS Form 1040, which is not dated and signed, is based on the total income for 2022. The Petitioner filed his petition in July 2022. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49. Here, the Petitioner has not demonstrated his earnings prior to the filing of the petition and submits evidence relating to income received, in part, after the filing of the petition.

Because he has not demonstrated his earnings as a video editor, the Petitioner has not shown that he commands a high salary relative to others in the field. Accordingly, we withdraw the favorable findings of the Director for this criterion.

### III. CONCLUSION

The Petitioner did not meet the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3). Therefore, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issue.<sup>6</sup>

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the

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<sup>5</sup> See 6 USCIS Policy Manual, *supra*, at F.2(B)(2).

<sup>6</sup> See *INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at \*5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at \*1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.